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(17,656)

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WILLIAM B. TYLER . . . . PLAINTIFF IN ERROR

v.

THE JUDGES OF THE COURT OF REGISTRATION . . . . DEFENDANTS IN ERROR

IN ERROR TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

ADDITIONAL BRIEF FOR THE PLAINTIFF IN ERROR

UPON THE QUESTION OF JURISDICTION

J. L. THORNDIKE
Counsel

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ADDITIONAL BRIEF FOR THE PLAINTIFF IN ERROR UPON THE QUESTION OF JURISDICTION

1. This case is brought here from a State Court, by writ of error under R.S. s. 709, as one in which the validity of a statute of the State was drawn in question on the ground of its being repugnant to the Constitution of the United States, and the decision of the State Court was in favor of its validity.

The plaintiff in error questioned the validity of the Land Registration Act on the ground that it was repugnant to the Constitution of the United States, and the decision of the State Court was that the Act was valid and not repugnant to the Constitution, and its decree was based on that decision.

The case was an application by the plaintiff in error to the State Court to prohibit proceedings in the Court of Registration to determine a question of boundary between him and certain persons who

had applied to register their land. The ground of his applicati was that the Land Registration Act, under which the proceedin were had, was unconstitutional *in toto*, because it was unconstit tional in two classes of provisions that were essential to the purpos for which the Act was passed. The provisions were (1) those b which the *original registration* was made conclusive upon all pe sons, and (2) those by which the *registration of subsequent dealing* was made conclusive upon all previously registered owners. Th plaintiff in error claimed that these provisions were such essentia parts of the system intended to be established by the Act, that, i they were invalid, the whole Act was also invalid, and the jurisdic tion given by it to the Court of Registration for the purposes of the Act failed. The objection to the provisions was that their effect in some cases would be to deprive *some* persons of their property with out due process of law. If those provisions were invalid on that ground, and it was essential to the purposes of the Act that all persons should be concluded by the proceedings in all cases, whether due process was employed or not, then the Act was wholly invalid and gave no jurisdiction to the Court of Registration. Any person that was brought before that court would be entitled, without regard to the process by which he was brought there, to object that it was an unconstitutional court without any jurisdiction whatever.

The grievance of the plaintiff in error was not that the process employed against him would not have been due process if the Court of Registration had been a competent court, but that an attempt was made to compel him to litigate the question of his boundary in an unconstitutional court which was without any jurisdiction to deal with it. His contention was that the provisions for determining the boundary between his land and the land to be registered were only an incident to the main purpose of the Act, which was to provide a new system of land transfer, by which the title to land included in certain specific boundaries should first be conclusively established by registration and should afterwards be dealt with by entries on the register having a like conclusive effect. If the parts of the Act could be separated from one another, and it was consistent with its purpose that the jurisdiction of the Court of Registration might be

exercised although some persons might, for want of due process, not be concluded, then the Act might stand in part, and nobody could object to the validity of the other parts unless he were deprived of his property without due process. But if the parts are not separable, and effect cannot be given to its principal purpose unless the rights of all persons are in all cases absolutely concluded by the registration, then the whole Act must stand or fall together, and anybody affected by it can object to its validity.

In the *Trade Mark Cases*, 100 U.S. 82, 98, it was held that a statute regarding trade marks, not limited to the cases in which Congress had power to legislate, was wholly void, although the particular case before the Court was one of those in which Congress might have legislated. The defendants were not required to show that their case was one to which the power of Congress did not extend.

In *State* v. *Guilbert*, 56 Ohio St. 575, where the Ohio registration of title act was held to be entirely invalid on the ground, among others, that some persons might be deprived of their property without due process of law, the case was an application for a mandamus against certain State officers to compel them to do certain things required by the Act for the purpose of carrying it into effect. There was no suggestion that they were to be deprived of property without due process, but they successfully maintained that the Act was unconstitutional on the ground that other persons might be so deprived of theirs.

The decision of the State Court was that (1) the provisions for original registration, and (2) the provisions relating to subsequent dealings with registered land, were valid and not repugnant to the Constitution of the United States or to that of the State, and on that ground refused a prohibition.

The State Court determined no other question, and its final decree rests wholly upon the decision of the constitutional questions, and it was necessary for that court to dispose of all of them in order to decide the case.

It is submitted therefore that the case should be dealt wi in accordance with the rules laid down by *Miller*, J., regardi jurisdiction of this Court to review cases in a State Court where Federal question is raised, in *Murdock* v. *Memphis*, 20 Wall. 636, viz.,

"2. That it [the Federal question] must have been decided by t State Court, or that its decision was necessary to the judgment or decre rendered in the case.

"3. That the decision must have been against the rights claimed asserted by plaintiff in error under the Constitution," &c.

"6. If it was erroneously decided against plaintiff in error, then th Court must further inquire whether there is any other matter or iss adjudged by the State Court, which is sufficiently broad to maintain th judgment of that court notwithstanding the error in deciding the iss raised by the Federal question. If this is found to be the case, th judgment must be affirmed without inquiring into the soundness of th decision on such other matter or issue.

"7. But if it be found that the issue raised by the question of Federa law is of such controlling character that its correct decision is necessary t any final judgment in the case, *or that there has been no decision by th State Court of any other matter or issue* which is sufficient to maintain th judgment of that court without regard to the Federal question, then this Court will reverse the judgment of the State Court, and will either render such judgment here as the State Court should have rendered, or remand the case to that court, as the circumstances of the case may require."

If the State Court had decided against the plaintiff in error on the ground that his objections to the validity of the act did not go to the whole act, but only affected it so far as it attempted to conclude the rights of persons without due process of law, the decision would have made it unnecessary to decide the Federal questions and would not have involved any question that could have been brought before this Court.

Chapman v. *Goodnow*, 123 U.S. 540, 548.
Castillo v. *McConnico*, 168 U.S. 674, 684.

If a writ of error had been brought in such circumstances, it would have had to be dismissed.

Eustis v. *Bolles*, 150 U.S. 361.

Remington Paper Co. v. Watson, 173 U.S. 443.

But as the State Court did not take that view of the Act, and rested its decree upon the decision of the Federal questions, they were properly brought to this Court by writ of error. It would be impossible to say that they were not material to a decision of the case, without taking a different view of the purpose of the Act from that on which the State Court acted. It is submitted therefore that the case is exactly within the rules laid down by *Miller*, J., as above-mentioned, in cases where a State Court has decided a Federal question against the plaintiff in error, and has not given a decision of any other matter sufficient to maintain its judgment without regard to the Federal question.

The decree of the State Court refusing the writ of prohibition was a final decree upon which a writ of error might be brought by R.S. s. 709, as in the similar case of an application for a mandamus.

Furman v. *Nichols*, 8 Wall. p. 56–57.

McPherson v. *Blacker*, 146 U.S. 1, 23.

2. In the original Brief for this plaintiff in error (p. 71) the reasons are given why the validity of the whole Act depends on the conclusiveness of both the original registration and the registration of subsequent dealings.

In addition to those reasons, reference may also be made to the original brief for the defendants in error (p. 8) where it is explained that the two *essential* and chief features of the system established by the Act are (1) the conclusive declaration of title, and (2) the method of subsequent transfer. It is also admitted at p. 36 of the same brief, that the purpose of the Act is not to furnish a new remedy by which titles may be quieted, but to establish a new system of transfer, and only as an incident to that purpose to settle

conclusively the state of the title upon the original registratio upon every transfer.

It is however urged for the defendants in error in the same (p. 82) that the 2nd objection, relating to the conclusiveness o registration of subsequent dealings with registered land, does go to the validity of the entire Act, and that the provision original registration might be upheld, although the provi regarding subsequent dealings were invalid.

This contention is contrary to the statements in the same just referred to, viz., that the provisions regarding the subseq dealings are one of the two essential features of the Act, and the only purpose of the original registration is to lay the founds for the new system of transfer.

The provisions for subsequent transfers are as essential to working of the Act as those for original registration, and non its purposes would be accomplished by the original registra unless subsequent transfers were to be effected as provided in It is impossible to believe that the legislature would have ena the parts relating to original registration without those relating subsequent transfers, for there would be no use of the original re tration unless the registration of subsequent dealings was to h the conclusive effect intended.

If the provisions concerning subsequent transfers were inva registered land could not be dealt with as if it were unregister for the Act itself forbids it. The Act provides (s. 29) that, a the original registration, "no deeds or other instruments relat solely to such land shall be recorded with the records of deeds, shall be registered in the registration book." And s. 50 provi that "no deed, mortgage," &c., "purporting to convey or aff registered land, shall take effect as a conveyance or bind the la but shall operate only as a contract between the parties," and " act of registration shall be the operative act to convey or aff the land"; and by ss. 39, 55, the registration of a transfer by t recorder is conclusive in favor of a *bona fide* purchaser. Accordi to these provisions registered land cannot be dealt with at all, if cannot be dealt with in the manner provided in the Act.

Moreover, as the State Court rested its decree upon its decision of a Federal question, it is submitted that it is not open to the defendants in error to contend in this Court that the question was not material, and that a different construction might be given to the State statute from that on which the State Court acted.

In *McPherson* v. *Blacker*, 146 U.S. p. 23, where a mandamus had been applied for in the State Court, it was said,

"The Supreme Court of Michigan held in effect that if the act in question were invalid, the proper remedy had been sought. In other words, if the court had been of opinion that the act was void, the writ of mandamus would have been awarded.

"And, having ruled all objections to the validity of the act urged as arising under the State constitution and laws adversely to the plaintiffs in error, the court was compelled to, and did, consider and dispose of the contention that the act was invalid because repugnant to the Constitution and laws of the United States.

"We are not authorised to revise the conclusions of the State Court on these matters of local law, and those conclusions being accepted, it follows that the decision of the Federal questions is to be regarded as necessary to the determination of the cause. *De Saussure* v. *Gaillard*, 127 U.S. 216."

And in a similar case, *Furman* v. *Nichol*, 8 Wall. p. 57–58, this Court said, "and unless the record discloses that the Supreme Court of Tennessee denied relief, on other than Federal grounds, it is perfectly manifest that we are compelled to take jurisdiction of this cause;" and, having decided the Federal question in favor of the plaintiffs in error, it reversed the judgment (p. 64), and directed that a judgment be entered awarding the writ of mandamus.

J. L. THORNDIKE.